

MAY 25 2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:	)	Before the Examiner:
B. Thomas Barker et al.	)	James L. Swiger III
Application Serial No. 10/731,210	)	Group Art Unit: 3775
Filed: December 9, 2003	)	Atty. Ref. No.: PC398.08
MULTI-AXIAL BONE	)	/MSDI-1005
SCREW ASSEMBLY	)	May 25, 2010

**Via Facsimile Transmission: 571-273-8300****PETITION UNDER 37 CFR § 1.78(a)(3) TO ACCEPT AN  
UNINTENTIONALLY DELAYED PRIORITY CLAIM UNDER 35 USC § 120****MAIL STOP PETITION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

For at least the reasons set forth herein, the Petitioner respectfully requests acceptance of the unintentionally delayed priority claim presented in this Petition for the above-captioned application in satisfaction of the provisions set forth in 37 CFR § 1.78(a)(3). Remitted herewith is a payment in the amount of \$1,410 for the requisite surcharge set forth in 37 CFR § 1.17(t). No additional fees are believed to be required for this Petition. However, should any additional fees be deemed necessary, please charge any such fees to Deposit Account No. 12-2424.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:	
May 25, 2010	
Date of Transmission	
Brad A. Schepers	
Name of Registered Representative	
	
Signature	
May 25, 2010	
Date of Signature	

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**IN THE SPECIFICATION:**

Please insert the following paragraph on page 1 immediately after the Title of the invention and immediately before the section heading FIELD OF THE INVENTION:

**CROSS REFERENCE TO RELATED APPLICATIONS**

This application claims priority to and is a continuation of U.S. Patent Application Serial No. 09/940,902 filed August 28, 2001, now U.S. Patent No. 6,660,004, which is a continuation of U.S. Patent Application Serial No. 09/387,991 filed September 1, 1999, now U.S. Patent No. 6,280,442.

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### REMARKS

The Petitioner respectfully requests acceptance of the unintentionally delayed priority claim presented above for the above-captioned application in satisfaction of the provisions set forth in 37 CFR § 1.78(a)(3). A payment in the amount of \$1,410 for the requisite petition surcharge set forth in 37 CFR § 1.17(t) is remitted herewith.

### Statement of Facts

The procedures established by the Director for accepting an unintentionally delayed priority claim under 35 USC § 120 are set forth in 37 CFR § 1.78(a)(3), and include submission of: (I) a petition to accept an unintentionally delayed priority claim under 35 USC § 120; (II) the reference required by 35 USC § 120 and 37 CFR § 1.78(a)(2) to the prior-filed application unless previously submitted; (III) the surcharge set forth in 37 CFR § 1.17(t); and (IV) a statement that the entire delay between the date the claim was due under 37 CFR § 1.17(a)(2)(ii) and the date the claim was filed was unintentional.

The Petitioner notes that a priority claim under 35 USC § 120 was presented in an amendment previously filed with the U.S. Patent and Trademark Office on March 23, 2006 by Christopher A. Brown accompanied by the following remarks:

The amendment to the specification noted above merely identifies the parent case to which this application claims priority. As noted above, this amendment to the specification was intended to have been filed earlier, but inadvertently was not. After reviewing the present Office Action and reviewing the file, the undersigned noted that no filing receipt had been received. A copy of the filing receipt was requested from the PTO, and was recently received. The filing receipt identified U.S. Application Serial No. 09/940,902 (now U.S. Patent No. 6,660,004) as a parent case. The amendment to the specification noted above is believed to be proper because a priority claim was noted in the filing receipt, and thus the benefit of the prior application should be granted and the amendment entered.

If the Examiner believes that entering the amendment to the specification and granting the benefit of the filing dates of one or both parent applications is inappropriate, then it is respectfully requested that the Examiner consider this paper as a petition under 37 C.F.R. § 1.78(a)(3). The reference to the prior applications required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) is submitted above. Any surcharge required pursuant to 37 C.F.R. § 1.17(t) is authorized to be charged to Deposit Account 23-3030. Additionally, the undersigned attorney of record states that the entire delay between the date the claim for benefit was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date the claim for benefit was filed was unintentional. As discussed above, the claim was intended to have been filed

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with a preliminary amendment, and it was discovered that the claim had not been filed when the present file was reviewed in connection with preparing a response to the present Office Action. Thus, it is believed that the present amendment of the specification and claim to benefit is proper, either because it had been previously made, or on the basis of the facts noted above.

See page 8, line 6 to page 9, line 4 of the Amendment filed on March 23, 2006.

It is not clear from the record whether the priority claim set forth in the Amendment filed with the U.S. Patent and Trademark Office on March 23, 2006 (hereafter "the Amendment") was officially entered. However, the Petitioner notes that even if the priority claim presented in the Amendment was not officially entered, as set forth on page 8, lines 15-18 of the Amendment, the representative requested that the submission be treated as a Petition under 37 CFR § 1.78(a)(3). The Petitioner further notes that the previous submission presented in the Amendment is believed to have fully complied with the requirements of 37 CFR § 1.78(a)(3), including the priority reference required by 35 USC § 120 and 37 CFR § 1.78(a)(2) to the prior-filed applications (see page 2, lines 1-8 of the Amendment); the surcharge set forth in 37 CFR § 1.17(t) (see page 8, lines 19-20 of the Amendment including an authorization to charge any fee due to Deposit Account 23-3030); and a statement that the entire delay between the date the claim was due under 37 CFR § 1.17(a)(2)(ii) and the date the claim was filed was unintentional (see page 8, line 20 to page 9, line 4 of the Amendment).

**Petition Under 37 CFR § 1.78(a)(3) to Accept an Unintentionally Delayed Priority Claim**

Although the previous submission set forth in the Amendment filed with the U.S. Patent and Trademark Office on March 23, 2006 is believed to have constituted a Petition in compliance with 37 CFR § 1.78(a)(3) to accept an unintentionally delayed priority claim under 35 USC § 120, as a precaution, the current Petition is submitted to request acceptance of the unintentionally delayed priority claim set forth above under 35 USC § 120 in the event that the previous Petition is found to be ineffective. The current Petition is believed to satisfy the provisions set forth in 37 CFR § 1.78(a)(3), including the reference required by 35 USC § 120 and 37 CFR § 1.78(a)(2) to the prior-filed application (see page 2 of the current Petition); the surcharge set forth in 37 CFR § 1.17(t) (see the attached payment of \$1,410); and the Petitioner hereby states that the entire delay between the date the priority claim was due under 37 CFR § 1.17(a)(2)(ii) and the date the priority claim was filed was unintentional.

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**CONCLUSION**

The Petitioner believes that the requirements set forth in 37 CFR § 1.78(a)(3) for submitting the above-identified unintentionally delayed priority claim under 35 USC § 120 have been satisfied. Accordingly, submission of the priority claim is believed to be proper, and a decision granting this Petition and entry of the amendment to the priority claim set forth above in the subject application is respectfully requested.

Respectfully submitted,

By: 

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